

46 Am. Jur. 2d Judges § 69

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Judges

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VIII. Liabilities

A. Civil Liability

2. Liability for Particular Types of Conduct

a. In General; Conduct Within Scope of Rule of Absolute Judicial Immunity

§ 69. Determination whether act is "judicial" in nature for purposes of judicial immunity—Factors considered

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  35, 36

Federal courts, in determining whether a judge's actions are judicial in nature so that the rule of absolute judicial immunity applies,¹ generally consider four factors.² These are:

(1) whether the precise act complained of is a normal judicial function or whether the act is normally performed by a judge;³

(2) whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers;⁴

(3) whether the controversy centered around a case pending before the court;⁵ and

(4) whether the parties dealt with the judge or the acts arose directly out of a visit to the judge in the judge's official capacity.⁶

These four factors are broadly construed in favor of immunity.⁷ Immunity may be afforded even though one or more of these factors is not met.⁸ In other courts, the following factors are used in determining whether an action is judicial for purposes of judicial immunity: (1) the need to assure that the individual can perform the functions without harassment or intimidation, (2) the presence of safeguards that reduce the need for private-damages actions as a means of controlling unconstitutional conduct, (3) insulation from political influence, (4) the importance of precedent, (5) the adversary nature of the process, and (6) the correctability of error on appeal.⁹

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Footnotes

- 1 § 67.
- 2 *Malina v. Gonzales*, 994 F.2d 1121 (5th Cir. 1993).
As to federal judges, generally, see Am. Jur. 2d, Federal Courts §§ 18 to 148.
- 3 *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991).
- 4 *Malina v. Gonzales*, 994 F.2d 1121 (5th Cir. 1993); *JNC Companies v. Ollason*, 137 B.R. 46 (D. Ariz. 1991),
aff'd, 996 F.2d 1225 (9th Cir. 1993).
- 5 *Malina v. Gonzales*, 994 F.2d 1121 (5th Cir. 1993); *JNC Companies v. Ollason*, 137 B.R. 46 (D. Ariz. 1991),
aff'd, 996 F.2d 1225 (9th Cir. 1993).
- 6 *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991).
- 7 *Malina v. Gonzales*, 994 F.2d 1121 (5th Cir. 1993); *Meyer v. Foti*, 720 F. Supp. 1234 (E.D. La. 1989);
Wightman v. Jones, 809 F. Supp. 474 (N.D. Tex. 1992).
- 8 *Malina v. Gonzales*, 994 F.2d 1121 (5th Cir. 1993); *Meyer v. Foti*, 720 F. Supp. 1234 (E.D. La. 1989).
- 9 *Blevins v. Hudson*, 2016 Ark. 150, 489 S.W.3d 165 (2016), cert. denied, 137 S. Ct. 239, 196 L. Ed. 2d 134
(2016).

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